



February 4, 2002

Mr. Robert L. Kane  
The University of Texas  
201 West Seventh Street  
Austin, Texas 78709-2902

OR2002-0517

Dear Mr. Kane:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 158083.

The University of Texas at Austin (the "university"), received a request for the following information:

1. Any and all disciplinary or other personnel actions or decisions in which Joe Powell participated as a decision-maker or reviewing official, or in which Joe Powell was the subject of the action, during Joe Powell's employment at the [university] during the time period of January 1, 1995 through the date of this request, including but not limited to any presently on-going disciplinary or other employment actions.
2. Joe Powell's transfer to, employment at, and subsequent return to the [university] from the University of Texas - Permian Basin.
3. The application of, consideration of and selection of Donna Hermance on or about July 2000 as "Executive Director of University Services and Printing."
4. All special or regular, internal or external, management or special audits or any and all [university] departments under the direct or indirect supervision of Charles Franklin and/or Joe Powell from January 1, 1995 through the date of this request, including but not limited to any draft audit reports, final reports, management or departmental responses to the audit points (draft or final), and including but not limited to any and all follow-up or corrective measures undertaken for each audit.

The requestor later limited the scope of the first category of this request to "those documents reflecting disciplinary action taken by, or directly approved by Joe Powell relating to the UT Police Department, and in particular, any law enforcement employees (e.g., certified peace officers), and excluding clerks and secretaries, within the time period from January 1997 through September 2001." You state that some of the responsive information has been made available to the requestor. You claim, however, that some of the information responsive to categories 1 and 4 of the request is excepted from disclosure under sections 552.101, 552.102, 552.103, and 552.116 of the Government Code.<sup>1</sup> We have considered the exceptions you claim and reviewed the submitted representative sample of information.<sup>2</sup>

You explain that the requestor made a request on October 19, 2001. On October 24, 2001, you asked the requestor to clarify category 1 of his request. *See* Gov't Code § 552.222 (providing that a governmental body may ask the requestor to clarify the request if what information is requested is unclear to the governmental body). Thus, the ten day time period to request a decision under section 552.301(b) with respect to category 1 of the request was tolled on October 24, 2001. *See* Gov't Code § 552.301(b); Open Records Decision No. 663 at 5 (1999) (providing that ten-day period is tolled during the clarification process). The university received the requestor's written clarification on November 6, 2001. On November 8, 2001, you asked the requestor for an additional clarification of his request. Thus, the ten day time period to request a decision under section 552.301(b) with respect to category 1 of the request was again tolled on November 8, 2001. Although the university had not yet received a response to this second request for clarification, the university submitted a request for a decision from this office on November 26, 2001. The university received the requestor's clarification on November 30, 2001. Accordingly, we will address the university's asserted exceptions.

You indicate that, as a result of the narrowed scope of the request, only a portion of the information initially submitted to this office for review is responsive to the request. Accordingly, this ruling does not address the information initially submitted in Tab 4, Tab 6, and the information regarding Mark Vancil in Tab 7.

You note that the university previously sought two decisions from this office with respect to the information submitted as Tab 5. In Open Records Letter No. 2001-3416 (2001), we concluded that the university could withhold some of the submitted information under section 552.108(a)(1) of the Government Code. You do not state, however, that the case to

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<sup>1</sup>As the information for which you claim sections 552.103 and 552.116 as exceptions to disclosure is no longer at issue here, we need not address your arguments under these exceptions.

<sup>2</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

which this information relates remains pending. If this case remains pending, the university may withhold the information you have marked as "Jane Doe Complaint #2" under section 552.108(a)(1) in accordance with Open Records Letter No. 2001-3416 (2001). See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001). If this case is no longer pending, the university may not withhold such information under section 552.108(a)(1) and it must be released, except as noted below.

In Open Records Letter Nos. 2001-3416 (2001) and 2001-3417 (2001), we concluded that the university was required to withhold portions of the information submitted as Tab 5 under section 552.101 of the Government Code. Therefore, as the four criteria for a "previous determination" established by this office in Open Records Decision No. 673 (2001) have been met, the university must withhold the information in Tab 5 previously marked under section 552.101 in accordance with Open Records Letter Nos. 2001-3416 (2001) and 2001-3417 (2001).<sup>3</sup> See Gov't Code § 552.301(f); Open Records Decision No. 673 (2001).

Next, we will address the information in Tab 7 that remains at issue. Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and incorporates the doctrine of common-law privacy. You also raise section 552.102, which protects "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." The protection of section 552.102 is the same as the protection provided by the common-law right to privacy under section 552.101. *Hubert v. Harte-Hanks Tex. Newspapers*, 652 S.W.2d 546 (Tex. App.--Austin 1983, writ ref'd n.r.e.). Consequently, we will consider these two exceptions together.

For information to be protected from public disclosure under common-law privacy, the information must meet the criteria set out in *Industrial Foundation v. Texas Industrial Accident Board*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Information must be withheld from the public when (1) it is highly intimate or embarrassing such that its release would be highly objectionable to a person of ordinary sensibilities, and (2) there is no legitimate public interest in its disclosure. 540 S.W.2d at 685; Open Records Decision No. 611 at 1 (1992). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.--El Paso 1992, writ denied), the court addressed the applicability of the common-law privacy doctrine to files of an investigation of allegations of sexual harassment. The investigation

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<sup>3</sup>The four criteria for this type of "previous determination" are 1) the records or information at issue are precisely the same records or information that were previously submitted to this office pursuant to section 552.301(e)(1)(D) of the Government Code; 2) the governmental body which received the request for the records or information is the same governmental body that previously requested and received a ruling from the attorney general; 3) the attorney general's prior ruling concluded that the precise records or information are or are not excepted from disclosure under the Act; and 4) the law, facts, and circumstances on which the prior attorney general ruling was based have not changed since the issuance of the ruling. See Open Records Decision No. 673 (2001).

files in *Ellen* contained individual witness statements, an affidavit by the individual accused of the misconduct responding to the allegations, and conclusions of the board of inquiry that conducted the investigation. *Ellen*, 840 S.W.2d at 525. The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that "the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.* When there is an adequate summary of the investigation, the summary must be released, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure.

Upon review of the four internal complaint files still at issue in Tab 7, we conclude that two of the four internal complaint files contain an adequate summary of the investigations involved in those files. We believe that the release of these summaries, which we have marked, serves the legitimate public interest in the harassment allegations. Based on *Ellen*, however, the university must withhold the identities of the victims and witnesses, which we have marked, from the information that must be released. Because the redacted summaries adequately serve the public interest in the information at issue, we further conclude that the remaining documents in these two internal complaint files are excepted from disclosure under section 552.101 in conjunction with the common-law right to privacy.

On the other hand, because there is no adequate summary of the investigations with respect to the two other internal complaint files in Tab 7, you must release the information in these two files in its entirety. However, based on *Ellen*, the university must withhold the identity of the victims and witnesses of the harassment from disclosure. We have marked the information in these files that must be withheld under section 552.101 in conjunction with common-law privacy.

You argue that the information still at issue in Tab 7 must be withheld in its entirety in order to protect the victims' and witnesses' identities. We conclude, however, that the privacy interests of the victims and witnesses will be adequately protected by redacting their names and other identifying information (i.e., addresses and telephone numbers). Therefore, there is no need to withhold any additional information under section 552.101 in conjunction with *Ellen*.

To summarize, we conclude that: (1) the university may withhold the information marked "Jane Doe Complaint #2" under section 552.108(a)(1) in accordance with Open Records Letter No. 2001-3416 (2001) if the case to which such information relates remains pending; (2) if this case is no longer pending, such information may not be withheld under section 552.108(a)(1) and, with the exception of the information marked under section 552.101, must be released; (3) the university must withhold the information in Tab 5 previously marked under section 552.101 in accordance with Open Records Letter Nos. 2001-3416 (2001) and

2001-3417 (2001); (4) the remaining information in Tab 5 must be released; (5) we have marked the information in Tab 7 that must be withheld under section 552.101 in conjunction with common-law privacy; and (6) the remaining information in Tab 7 that is still at issue must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Karen A. Eckerle  
Assistant Attorney General  
Open Records Division

KAE/sdk

Ref: ID# 158083

Enc: Submitted documents

c: Mr. Christopher S. McDougal  
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(w/o enclosures)